

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION**

STATE CHARTER SCHOOL APPEAL BOARD

In Re: Sugar Valley Rural Charter School : **Docket No. CAB 2004-04**
:
Appeal from the non-renewal of charter by :
Keystone Central School District :

OPINION AND ORDER

I. Background

The Sugar Valley Charter School (“Sugar Valley”) was originally granted its charter by order of the Charter School Appeal Board (“CAB”) on December 14, 1999. The term of this charter was from July 1, 2000, through June 30, 2005. Thus, on June 17, 2004, Sugar Valley requested that the Keystone Central School District (“Keystone”) renew the charter for an additional 5-year term. On October 7, 2004, Keystone voted 8-1 in favor of denying renewal. By ruling dated October 28, 2004, Keystone gave Sugar Valley written notification of the Determination of Denial of its charter. The Determination of Denial included forty-three findings to support Keystone’s decision.

On November 12, 2004, Sugar Valley filed with the CAB an appeal of Keystone’s decision to not renew Sugar Valley’s charter . The record was certified and the appeal heard on February 15, 2005. For the reasons set forth below, we hold that the non-renewal of the Sugar Valley charter was improper.

II. Findings of Fact

1. On or about June 17, 2004, Sugar Valley requested that Keystone renew its charter.
2. On October 7, 2004, Keystone voted to deny the renewal of the charter.

3. On or about October 28, 2004, Keystone issued a Notice of Determination notifying Sugar Valley that its application for renewal was denied. Keystone made forty-three findings to support its decision.
4. The Pennsylvania Department of Education stated that Sugar Valley was in compliance with Special Education requirements.
5. The curriculum contained in the original application of the charter school is still in effect and there is no evidence that this curriculum has in fact been changed.
6. The expert retained by Keystone indicated that Sugar Valley did not fail to meet audit requirements.
7. The expert retained by Keystone did not know if Sugar Valley had committed a material violation of its charter.
8. Sugar Valley has not been convicted of fraud.

III. Conclusions of Law

1. The Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, 24 P.S. §17-1701-A, *et. seq.* (“CSL”), governs the application process, the approval process, the operation and revocation/renewal of charter schools in Pennsylvania.
2. Pursuant to the CSL, a school district may deny the renewal of a charter based on any of the following:
 - (a) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.
 - (b) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter pursuant to section 1716-A.

- (c) Failure to meet generally accepted standards of fiscal management or audit requirements.
 - (d) Violation of provisions of this article.
 - (e) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
 - (f) The charter school has been convicted of fraud. 24 P.S. §17-1729-A(a).
3. Sugar Valley did not materially breach its charter.
 4. Sugar Valley did not breach the requirements for student performance set forth in 22 Pa. Code Ch. 5.
 5. Sugar Valley did not violate generally accepted standards of fiscal management or audit requirements.
 6. Sugar Valley has not been convicted of fraud.
 7. The non-renewal of Sugar Valley's charter was improper because the record does not support any of the failures or violations enumerated in Section 1729-A of the Charter School Law.

IV. Standard of Review

Before addressing the merits of this appeal, it is necessary to set forth the proper standard of review to be applied by the CAB in this matter. 24 P.S. §17-1729-A(d) states, “[T]he appeal board may consider the charter school plan, annual reports, student performance and employee and community support for the charter school in addition to the record. The appeal board shall give due consideration to the findings of the local board of directors and specifically articulate its reasons for agreeing or disagreeing with those findings in its written decision.” The Commonwealth Court, in West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa. Cmwlth. 2000), addressed the proper standard to be applied by the Appeal Board in its review of a school district's denial of a charter school application. Although this is a denial

of a renewal, the CSL language on review is essentially identical. In discussing this language, the Commonwealth Court said:

By giving the [CAB] the right to disagree with the local school board and requiring it to specifically articulate reasons for doing so, the General Assembly has unquestionably granted the [CAB] the authority to substitute its own findings and independent judgment for that of the local school board.

Id., at 461. Accordingly the Commonwealth Court has found that the proper standard of review that is to be applied by the CAB in charter denial cases is to be “*de novo*.” The same standard applies in the case of CAB’s review of denial of renewal of a charter. Based upon this standard, while giving due consideration to the findings of Keystone, the CAB will independently review each of the bases cited by Keystone for its denial of Sugar Valley’s application for renewal of its charter.

V. Discussion

Once a charter has been granted, it must be renewed at the end of its term, be non-renewed or be terminated for cause at some time prior to its expiration. To justify a non-renewal, the District must demonstrate at least one of the following failures or violations:

- (1) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.
- (2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.
- (3) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (4) Violation of provisions of this article.
- (5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.

(6) The charter school has been convicted of fraud. 24 P.S. §17-1729-A(a).

In this case, Keystone has set forth forty-three findings to justify the non-renewal of the charter. It should be noted, however, that Keystone did not specifically adopt these reasons at a public hearing. These findings were not discussed at any Keystone meeting. Instead, some Board members stated their reasons for voting to not renew the charter. As will be discussed later, these reasons do not constitute a valid basis for non-renewal.

As previously stated, the Notice of Determination that was sent to Sugar Valley contained forty-three findings. Each of these findings will be addressed, as they are set out in Keystone's Notice of Determination.

A. Material Violations of a Condition, Standard or Procedure Contained in the Written Charter. (17-1729-A (a)(1))

1. Keystone finds that SVRCS has violated or not complied with various parts of its written Charter, in violation of §17-1729-A(a)(1). These violations were identified through both testimony received by Keystone at the three public hearings, as well as through reports generated in conjunction with the renewal process.

Although Keystone asserts that Sugar Valley has not complied with the terms of its charter, it neither details the areas of noncompliance, nor provides persuasive evidence of specific failures. Keystone's expert, Dr. Trohoski, stated that she did not know what a material violation would be and could not state if a material violation had occurred. Thus, this general ground is rejected because it is insufficient to support a decision.

2. Under 6.2 of the SVRCS Charter, entitled "Governance," it states that "a seven member Board of Trustees will govern the SVRCS. The Board shall consist of two teachers elected by staff of the SVRCS; two parents elected by parents of students enrolled-at the SVRCS; and two community members and one alumnus of SVAS..." (Exhibit "19" at P. 60). According to Board Members Scott Wertz and Leroy Wagner, no alumnus of SVAS is currently a member of the Board of Trustees, nor has one sat on the Board during the four-plus years that the SVRCS has been in operation. (Exhibit "25" at Pages 11-13, and 41).

There is little evidence in the record related to this issue. It was clear, however, when the charter was granted, that an alumnus of Sugar Valley could not be on the Board of Trustees at the inception of the school. Until students graduated, it would not be possible for an alumnus to be appointed or elected to the Board. Since this was recognized at the time of the grant of the charter, the failure to comply with this provision it could not be considered a material violation of the charter.

3. Under 2.1.2 of the SVRCS Charter, entitled “Personalized Learning,” the Charter states that “traditional grade levels would be flexible when necessary as to allow for a more personalized and diverse education program with students of differing age groups inter-mingling based upon individual HELP plans.” (Exhibit “19” at P. 5). In contrast to this provision, a teacher on the curriculum committee testified that SVRCS is “moving away from multi-age classes.” (Exhibit “25” at P. 5).

Although one teacher is quoted as stating that SVRCS is “moving away from multi-age classes,” there is nothing else in the record to indicate that Sugar Valley has actually moved away from multi-age classes. Until the school actually ceases to use multi-age classes, it could not be said to have violated its charter. A suspicion that it might be doing so is not sufficient to qualify as a material breach.

4. On the issue of “inter-mingling” and the HELP program, Keystone finds persuasive the findings of Dr. Trohoski, who states in her report that:

“One construct of the SVRCS Charter School mission speaks to Personalized Learning, which includes self-pacing and the development of an individualized program through the HELP Process. There are also several references in the Marshall et al study (2003) that speak to marginal satisfaction with the self-pacing efforts on behalf of students. This self-pacing concept may be contributing to the low performance levels on the PSSA test.” (Exhibit “4” at P. 29).

Keystone finds that if SVRCS is changing the way it operates, then the Charter must reflect such changes. Currently, it does not reflect this change, as well as numerous other changes or additions outlined herein.

There is nothing in the finding to support a determination that the school has changed the way it operates. Dr. Trohoski indicates that there may be dissatisfaction with the method of operation. She does not testify that it has changed. The above statement by Dr. Trohoski does not support a determination that Sugar Valley has committed a material violation of its charter.

5. In Section 4.1 of the SVRCS Charter, entitled "School Mission," SVRCS states that the SVRCS would strive for "a continued zero dropout rate... and 100% post-secondary continuing education." (Exhibit "19" at P. 11). In their 2003-2004 Annual Report, SVRCS lists seventeen (17) students leaving the Charter School that year. Fifteen (15) students are reported to have transferred to other schools, yet no information is given on the remaining two (2) students. (Exhibit "23").

The statement is clearly a goal. Sugar Valley did not submit its charter with a guarantee that there would be no dropouts and that all students would go on to post-secondary continuing education. There was testimony from Sugar Valley indicating that the school would continue to strive to reach its goal. The fact that it has not reached that goal does not evidence that it committed a material violation of its charter.

6. In testimony presented to Keystone, it was determined that the Annual Report for 2003-2004 contained neither information regarding the dropout rate in regard to the mission statement, nor information following up on graduating students' educational pursuits at a post-secondary level. (B.H.T., August 31, 2004, at P. 11)

There is nothing in the record or in the charter school law that evidences that the Annual Report was required to include this information. Without a requirement to provide such information, the failure to do so cannot be the basis for a finding that Sugar Valley committed a material violation of its charter.

7. Keystone also finds that SVRCS is offering vocational classes in violation of its Charter, which fails to contain any provisions for such a program. (B.H.T., July 29, 2004 at P. 41 and Exhibit "19").

8. Keystone also finds that SVRCS is offering adult education classes in violation of its Charter, which fails to contain any provisions for such a program. (B.H.T., July 29, 2004 at P.41 and Exhibit “19”).

These findings will be addressed together. They are troublesome. The findings are based both upon the school’s charter, which allegedly does not specifically provide for vocational and adult classes and upon the testimony of one of SVRCS’ witnesses. First, regarding the charter, it does not mention vocational education, but it does, we find, mention adult education. Exhibit 19, at Section 2.1. Second, the witness’ testimony included a rather lengthy description of the charter school curriculum. B.H.T., July 29, 2004 at PP.40-42. During this discussion, the programs, activities and projects included in the curriculum and directed towards the individual needs of the students were described to include:

A mentoring program, peer tutoring, hands on learning, block schedule to reduce fragmentation, Envirothon and soon-to-be Junior Envirothon, female support group, cooperation with sportsmen, watershed groups, vo-tech and ag development with the Pennsylvania Department of Agriculture, senior exit interviews, ... expanding and developing adult ed. ... B.H.T., July 29, 2004 at P.41 [emphasis added].

We do not find that this testimony, standing alone, establishes that SVRCS is providing vocational education to its students outside of the scope of its charter. Moreover, the testimony appears, in our view, to suggest simply that the charter school is working in conjunction with the state Agriculture Department on developmental programs in vocational and agricultural pursuits. There is no evidence that these are classes or that they are a required component of the school curriculum. Thus, we reject the finding of the district that SVRCS is illicitly providing vocational instruction as being without merit. We find likewise regarding adult education, since that, contrary to the district’s finding, is noted in the approved charter. For these reasons, we conclude that the district’s findings cannot support a determination that Sugar Valley committed any violation of its charter in this regard.

9. Keystone finds that based on the evidence adduced at the

hearings, the SVRCS has failed to meet many objectives and goals listed in its charter. Specifically, goals towards attendance listed in 4.1 of the Charter, and objectives for math, English and writing, listed in 4.2.2 of the Charter. (See Exhibit “1.9” at Pages 12, 13). Keystone’s findings are premised on the results of PSSA scores (see ¶¶14-16 herein) and testimony on excessive absences for two (2) special education students (See ¶ 33 herein).

Keystone has taken the position that the failure of Sugar Valley to meet goals and objectives is equivalent to a material breach of its charter. If Sugar Valley had made guarantees in its charter, the failure to meet the guarantees might be sufficient basis to find a material violation of the charter. The failure to meet goals cannot provide such a basis.

B. Failure to Meet the Requirements for Student Performance Set Forth in 22 Pa. Code Ch.5 and/or Failure to Meet Performance Standards Set Forth in the Written Charter (§17-1729-A(a)(2))

1. Keystone finds that SVRCS has failed to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 and as set forth in the SVRCS Charter, constituting a violation of §17-1729-A(a)(2). These failures were identified through both testimony received by Keystone at the three public hearings, as well as through reports generated in conjunction with the renewal process.

The record does not evidence that Sugar Valley has failed to meet the applicable student performance requirements established by the State Board of Education, which are now set forth at 22 PA. Code Ch. 4.¹ It does evidence that the test scores have fallen and that, if they are not improved, Sugar Valley will most likely violate the standards set out in 22 Pa. Code Ch. 4. Until the standards are actually violated, test scores cannot be the basis of a finding that the act has been violated.

Curriculum

2. Dr. Carolyn Trohoski was commissioned by the Keystone Central School District for the purpose of conducting a segment of the assessment of the SVRCS to determine whether the Charter School is in compliance

¹ The law speaks to failure to meet the student performance requirements of 22 Pa. Code Chapter 5 “or subsequent regulations promulgated to replace 22 Pa. Code Chapter 5.” 24 P.S. §17-1729-A(a)(2). Chapter 5 of Title 22 of the Pa. Code was repealed and replaced by a new chapter (Chapter 4) on January 15, 1999 at 29 Pa. B. 399.

with its Charter and that the requirements for testing, civil rights and student health and safety are being met. (Exhibit “4” at P. 2) Dr. Trohoski and her associates have nearly twenty-five (25) years of experience with program evaluation. (Exhibit “4” at P. 2). A main component of her review centered on an examination of SVRCS’s school curriculum strategies of instruction, testing, and assessment results. (Exhibit “4” at P. 2 and Board Hearing Transcripts (hereinafter, B.H.T.), July 29, 2004 at P. 71).

This finding is merely background and does not form the basis for the denial of the renewal of the charter.

3. As part of her evaluation, Dr. Trohoski visited the SVRCS on July 1, 2004 to conduct on-site interviews with board members, teachers and staff. She described the atmosphere at SVRCS on July 1, 2004 as generally tense, and primarily attributable to the presence of SVRCS’s attorney and a legal stenographer. (B.H.T., July 29, 2004 at P. 75). At the meeting, she was not provided with all of the documentation that she requested, which hampered her evaluation. In response to Board Member questions, she indicated that she was deterred in her fact-finding during the visit. (B.H.T., July 29, 2004 at P. 122).

During testimony before Keystone, Dr. Trohoski acknowledged that the attorney for Sugar Valley was not in the room at all times. She did not offer testimony that suggested that the legal stenographer or the attorney actively interfered with her ability to ask questions. There is nothing in the Charter School Law that would prohibit the Sugar Valley from having its attorney or a legal stenographer present at this meeting. This finding cannot form a basis for the denial of the renewal of the charter.

4. Keystone found that Dr Trohoski exhibited no bias towards SVRCS, in that Dr. Trohoski has evaluated numerous other charter schools, where she was generally greeted with large-scale cooperation and a desire by said school to open their school to her.

This finding is merely a self-serving statement and cannot form a basis for the denial of the renewal of the charter.

5. In her opening remarks before Keystone, and in her report, she states that:
 - a. The curriculum contained in the SVRCS Plan is based on

53 outcomes and a an outdated plan that was in vogue in the 1980's and 1990's. This curriculum lacks the academic standards that are currently required by the State Board of Education. (B.H.T., July 29, 2004 at P. 79 and Exhibit "4" at P. 6).

- b. Dr. Trohoski presently was unable to identify any evidence of a "written curriculum in the form of planned courses." (B.H.T., July 29, 2004 at P. 79). When asked to see the curriculum, Dr. Trohoski was presented with two documents: (1) a lesson plan that was "very similar to a brief outline which would have been placed in a weekly lesson planning book, such as those used by teachers several years ago," and (2) an integrated unit with standards listed in the front of the document and isolated from the pictures and the narrative of the activities unit. (Exhibit "4" at P. 6). Dr. Trohoski noted that the two documents lacked critical aspects of a lesson plan and a planned course of instruction. (Exhibit "4" at P. 6).

Dr. Trohoski stated that she did not know whether a written curriculum was required. She did not state that Sugar Valley was violating Pennsylvania Standards. This argument is very similar to the one made by Keystone when it initially denied the Sugar Valley charter. The CAB, in CAB 1999-4, found the curriculum to be satisfactory. There is no evidence before the CAB that the curriculum has changed sufficiently to provide a basis for a finding of a violation of the charter.

6. Upon questioning by Dr. Trohoski, a history teacher at SVRCS, Scott Wertz, was unable to recall if a written curriculum existed in history. He stated that he and other teachers at SVRCS have been given the flexibility to teach what they (the teachers) feel is important. He further added that, "I have had no limitations placed on what must be taught for a certain school year." (Exhibit "25" at P. 6)

This finding is insufficient to provide a basis for a determination that Sugar Valley violated its charter. Although Dr. Trohoski testified that Mr. Wertz stated this, she did not testify that it violated any requirement of Pennsylvania law or that it violated Sugar Valley's charter.

7. As a member of the Curriculum Committee, Mr. Wertz, indicated that he did not write curriculum, "it's written later on." As of the date of his interview, he stated that the committee has been dealing more "with gathering information." (Exhibit "25" at P. 7).

This finding is insufficient to provide a basis for a determination that Sugar Valley violated its charter. Although Dr Trohoski testified that Mr. Wertz stated this, she did not testify that it violated any requirement of Pennsylvania law or that it violated Sugar Valley's charter.

8. As part of her assessment, Dr. Trohoski relied on an evaluation report conducted by Dr. J.D. Marshall of State College, PA. According to a poll conducted in conjunction with the Marshall Report: (1) teachers had less satisfaction than school administrators with the planning of students' personalized learning programs. (B.H.T., July 29, 2004, at P. 110). Another study concluded that nearly half the teachers at SVRCS disagree with or are dissatisfied with the school's curriculum. (B.H.T., July 29, 2004 at P. 112).

Dissatisfaction of teachers with the school's curriculum is not a basis for a determination that Sugar Valley does not have a curriculum or that it has violated Pennsylvania law or its charter.

9. When given the chance to clarify whether a written curriculum existed at SVRCS, Gretchen Moody's responses did little to shed light on the issue. At best, she stated that there was a "scope and sequence for every course." (B.H.T., August 30, 2004, at P.169).

The record shows a disagreement between Keystone and Sugar Valley with regard to its curriculum. Dr. Trohoski, who admittedly spent little time at Sugar Valley, stated that there was no curriculum. The finding misrepresents the testimony before Keystone. Ms. Moody testified that there was a curriculum and described that curriculum. Based on the totality of the record, it is clear to the CAB that Sugar Valley has a curriculum and that it has not violated Pennsylvania standards concerning curricula.

PSSA Scores

10. As part of her evaluation, Dr. Trohoski conducted an extensive review of PSSA scores for SVRCS students. Prior to the first public meeting, she was only provided with the results of the 2002-2003 testing. In pages 8 through 14 of her report, Dr. Trohoski examined test results for grade 5, 8 and 11, in math, reading and writing. Although she noted positive results for elementary students, she expressed concern over most of the secondary scores. She explained that under NCLB, SVRCS's scores placed the School in a "watch" status, but that the School was able to obtain "safe

harbor” for the 2002-2003 school year. (Exhibit “4” at P. 8 and Exhibit “8” at P. 1).

The testimony before Keystone did not indicate that Sugar Valley had violated NLCB. It did indicate, however, that Sugar Valley was in a watch status. The Charter School Law provides that a violation of a statute may be grounds for denial of a charter. 24 P.S. §17-1729A(5). The possibility that it might violate a law in the future is not sufficient.

11. After the July 29, 2004 hearing, Dr. Trohoski was provided with Sugar Valley’s PSSA scores for 2003-2004. An in-depth analysis of these scores can be found in her supplemental report August 31, 2004. These new PSSA scores showed a decrease in both math and reading. (B.H.T., August 31, 2004, at P.4). As a result, SVRCS is no longer eligible for a safe harbor exception. (B.H.T., August 31, 2004, at P. 5 and Exhibit “8” at P. 1). Of particular note, the current Annual Report shows no goals for improving PSSA scores. (B.H.T August 31, 2004, at P. 10).

Once again, the Charter School Law provides that a violation of a statute may be grounds for denial of a charter. 24 P.S. §17-1729-A(5) The possibility that it might violate a law in the future is not sufficient.

12. Dr. Trohoski also noted that the SVRCS scores for math continued a downward trend. (B.H.T., August 31, 2004, at P. 10).

Likewise, the Charter School Law provides that a violation of a statute may be grounds for denial of a charter. 24 P.S. §17-1729-A(5) The possibility that it might violate a law in the future is not sufficient.

13. In her testimony before Keystone, Gretchen Moody also expressed concerns over PSSA scores. (B.H.T., August 31, 2004, at P.146).

The fact that an administrator of the school recognized that the falling PSSA scores were a concern is not a basis for denying renewal of the charter. Ms. Moody further testified that the school was concerned about the falling scores and was taking steps to address them.

Measurable Goals

14. Pursuant to the legislation of No Child Left Behind (hereinafter, “NCLB”) and the Pennsylvania Accountability System (hereinafter, “PAS”), from

which charter schools are not exempt, charter schools must have a set of measurable objectives and specific PAS goals. (Exhibit “4” at P. 8)

Sugar Valley included measurable goals in its annual reports to the district. Although Sugar Valley realized that its goals could have been better written, the failure to write goals that are as clear as they could be is not the same as not having them.

15. According to Dr. Trohoski, SVRCS has no set measurements and no measurable goals. (B.H.T., P. 101-102).

This finding is undercut by the next finding, which states that Sugar Valley, in its Annual Report, indicated that it believed that it could have done a better job of writing its goals so that they could have been more measurable. The belief that they could have been more measurable indicates that measurable goals did exist.

16. In her report, Dr. Trohoski stated that the lack of measurable goals “in the Annual Measurable Goals was a problem in the Annual Report, 2002-2003. There was no way to determine how effective the strategies and results were in regards to the goal.” Dr. Trohoski also noted that the SVRCS staff by their own admission, recognized this as an area of concern. (Exhibit “4” at P. 29). In the 2002-2003 Annual Report, SVRCS states that “[w]e believe our goals could have been written better to be more measurable and specific.” (Exhibit “22” at P. 8).

Having goals that are not as clearly measurable as they could be does not equate to having no goals. There is no finding that Sugar Valley has actually violated NCLB because of its poorly written goals. The Charter School Law requires that another statute has been violated in order to rely upon such violation as a basis for non-renewal. Marginal compliance with a statute, however, is not equivalent to violation. Thus, this is not a valid ground for non-renewal.

- C. Violations of the Charter School Law. (24 P.S. §17-1729-A(a) (4))
 1. Keystone finds that SVRCS has violated provisions of the Charter School Law, in violation of § 17-1729-A(a)(4). These violations were identified through both testimony received by Keystone at the three public hearings, as well as through reports in conjunction with the renewal process.

This finding is too vague to support non-renewal of the charter.

2. The Home/School Contract as written, violates both the Charter School Law and the Public School Code. It conditions acceptance into the school on the parents' promise to perform 20 hours of community service. (B.H.T., July 29, 2004, at P.19). In Section 8.2 of the, SVRCS Charter, entitled "Admissions Policy," the Charter states that:

"for prospective students and parents/guardians include acceptance of the Home/School Contract and willingness to abide by the School's Code of Conduct." (Exhibit "19" at P. 70).

This Contract was part of the original charter application. Since it was not a basis for denying the original charter, it cannot be the basis for denial of renewal of the charter.

3. The Home/School Contract requires parents to "[v]olunteer at least twenty (20) hours of service each year to the school." A literal reading of the charter explicitly conditions a student's acceptance into the charter school on the parents willingness, among other things, to volunteer a specified number of hours to the school. Representatives of SVRCS may state that the Contract is not legally binding, but it nevertheless states otherwise in the Charter.

It is clear that Sugar Valley never intended to enforce the provisions of this Contract since one of the signatories to it was the student. A contract that is clearly not binding on its face, cannot be considered a violation of law sufficient to form the basis for the non-renewal of the charter. Further, this Contract was part of the original charter application. Since it was not a basis for denying the original charter, it cannot be the basis for denial of renewal of the charter.

4. In addition, SVRCS has stated that the volunteer hours are a taxable deduction, indicating that SVRCS is receiving donations in violation of Charter School Law. (B.H.T., August 30, 2004, at P. 88).

There is no credible testimony in the record to support this finding. The only evidence cited is the testimony of a witness who clearly was in opposition to the existence of the charter school. Without better evidence to support this finding, it cannot form the basis of the determination to deny renewal of the charter.

5. Keystone finds that SVRCS fails to meet one of the basic tenets of the Charter School Law, specifically the encouragement of innovative ideas. SVRCS cites to: (1) school newsletters, (2) peer tutoring, (3) trail

cameras, (4) weather bug station, (5) horticulture, (6) and the HELP program (7) small class sizes. (B.H.T., July 29, 2004, at P. 51).

This contention is identical to a contention raised by Keystone in its original denial of the charter application. In its decision granting the charter, CAB stated that: “In taking this position KCSD has misconstrued the legislative intent of promoting charter schools in order to ‘**encourage** the use of different and innovative teaching methods.’” See 24 P.S. §1702-A(3) (emphasis added). The purpose of the statute is to **encourage** the use of innovative methods, not to exclude charter applicants whose proposed methods may not be as innovative or as different as the school district believes they should be.” *In Re Sugar Valley Rural Charter School*, CAB 1999-4, P. 15. Thus, CAB has been provided with no evidentiary or legal basis to change its opinion at this point in time, when the charter is up for renewal.

6. Keystone finds that what the SVRCS cites to as innovative can already be found at the Keystone Central School District. Specifically, Keystone finds that:
 - a. Mill Hall Elementary has the “Husky” News;
 - b. Central Mountain High School has an excellent collaboration with the Lock Haven Express;
 - c. Horticulture classes are offered at the Central Mountain High School; and
 - d. KCSD employs the GAP program which is similar to HELP. (B.H.T., July 29, 2004, at P. 51).

As stated above, Keystone clearly misunderstands the legislative intent behind charter schools. This issue was addressed in the original charter application. CAB sees no basis for changing its opinion on this issue.

7. Keystone specifically finds that the size of class is not an innovative initiative, and may just as well be attributable to low enrollment.

For the reasons stated above, this finding is insufficient to form a valid basis for denial of the renewal of the charter.

8. A member of the public, Carol Breon raised concerns over a “renovation grant” being used for new construction of basement (B.H.T., August 31, 2004, at P. 93). Upon further inquiry, Keystone finds that:
 - a. When it was enacted, the Charter School Law stated that “a charter school shall not construct a facility with public funds received from the department or a local school district.” 24 P.S. § 17-1722-A(c). This subsection (c) was repealed by the House Bill No. 564 Session of 2003 (Act No. of 2004). However, the repeal was not made retroactive, and it would apply prospectively. Accordingly, at the time SVRCS received the state grant, subsection (c) was in effect.
 - b. The SVRCS received a 2002-2003 School Renovation, IDEA and Technology Grant from the Commonwealth of Pennsylvania, Department of Education in the total amount of \$748,881.00. Of the total amount, \$451,810.00 was for school renovations. In order to receive the grant, SVRCS submitted an application. The application contained a Request for Proposal Budget Page which itemized the school renovations to be done, and allocated a dollar amount to each item.
 - c. These funds were used to construct a “basement” at an existing facility leased by the SVRCS from SVCC, in order to create additional usable space;
 - d. Accordingly, it appears that a portion of the funds granted to SVRCS by the state were used for “construction” rather than repair or renovation. Such a use of funds constitutes a violation of Section 17-1722-A(c).

The CAB takes official notice of the fact that the Department of Education discovered that a portion of this grant was proposed to be used for construction. It subsequently negotiated changes in the scope of work and the grant agreement was amended to remedy that issue. Moreover, the Department performed an on-site monitoring after the work was completed and determined that the terms of the agreement were met. This contract matter did not and does not constitute a violation of law. It cannot, therefore, be relied upon a grounds for denial of renewal of the charter.

9. The charter states that SVRCS is for residents of KCSD, when law

allows any Pennsylvania student to attend. Such a policy is in violation of the Charter School Law (B.H.T., August 31, 2004, at P. 100).

This finding cannot be the basis for the determination to not renew the charter. The original charter has not been amended and was approved with the language to which Keystone has now raised objection. Since it was not a basis for denial of the original charter, it cannot be the basis for non-renewal of the charter. Moreover, this provision is clearly consistent with the Charter School Law, which specifically provides that first preference in charter school admission may be given to resident students, which would be students residing in the KCSD. 24 P.S. §17-1720-A(a).

D. Violations of Laws from which the SVRCS has not been Exempted; Including Federal Laws and Regulations Governing Children with Disabilities. (§17-1729-A(a)(5))

1. Keystone finds that SVRCS has violated provisions of state and federal laws from which SVRCS has not been exempted in violation of § 17-1729-A(a)(5). These violations were identified through both testimony received by Keystone at the three public hearings, as well as through reports generated in conjunction with the renewal process.

This finding is too vague to be the basis for non-renewal of the charter.

2. Keystone finds that teacher certification, especially with regard to special education, does not meet state standards. Initially, in 2003, the Auditor General concluded that SVRCS failed to comply with the Charter School Law's certification requirements in 2002-2003. (Exhibit "11" at P. 6).

Dr. Trohoski testified that she did not base her findings of lack of certification on the curriculum clusters that were being used by the school, but based them solely on the Auditor General's findings. She also testified that the Department of Education had a different opinion. Since it is the obligation of the Department of Education to implement this law, deference should be given to its interpretations. It is not clear, based on this testimony, that Sugar Valley was in violation of the Department of Education's requirements. Since no clear violation exists, it cannot be the basis for the decision to not renew the charter.

3. Dr. Trohoski's inquiry into teacher certification produced more uncertainty as to SVRCS's current compliance with teacher certification. At a minimum, she was able to ascertain that:
 - (1) The only teacher she was able to interview on July 1, 2004 was Scott Wertz. He informed Dr. Trohoski that he was teaching history, but his certification was in physical education. (Exhibit "25" at P. 13);
 - (2) The only special education teacher she was able to interview on July 1, 2004 was Angela Basala. She informed Dr. Trohoski that she was not certified in special education, but was presently working towards attaining certification. (Exhibit "25" at P. 21); and
 - (3) In her report, Dr. Trohoski also noted that some of the elementary teachers were teaching on emergency certificates, and that "no evidence was found for the certification of a special education supervisor." (Exhibit "4" at P. 27).

In this instance, having reviewed the record, including the Briefs filed in the appeal, CAB concludes that the district's findings were in error or were incomplete. For example, in regards to Ms. Basala, the charter school asserts that she was teaching under an emergency certificate at the time of her interview and that she has since secured her special education certification. This action was proper and, on this basis, we reject Keystone's contrary finding.

4. Keystone agrees with Dr. Trohoski's assessment that ties together the lack of teacher certification, the lack of a written curriculum, and the resulting low PSSA scores, when she states in her supplementary report that:

"The two areas of concern, student performance levels on the PSSA and Teacher Certification, have a nexus or connection. Highly qualified teachers have skills and content knowledge that can be directed to raising student scores. The concern areas can be coupled with additional strategies such as a written curriculum...and measurable goals." (Exhibit "8" at P. 8)

For the reasons set out above related to the findings of the Department of Education that Sugar Valley complied with the teacher certification requirements, this finding cannot form a valid basis for a decision to not renew the charter.

5. In addition to the certification issues raised with respect to special education, Keystone also finds that SVRCS possesses no discipline criteria for special education students. (B.H.T., July 29, 2004, at P. 114). Dr. Trohoski notes that, “the discipline plan for SVRCS Charter School (2003-2004) does not contain references to the accommodations for Special Education Students.” (Exhibit “4” at P. 30)

The Department of Education found that Sugar Valley was in compliance with special education requirements. There was no testimony that stated that the discipline plan had to specifically reference special education students. This finding cannot, therefore, be a valid basis for a determination that the charter should not be renewed.

6. Upon questioning by counsel for SVRCS, Dr. Trohoski related that no special education plan was identified at SVRCS. Specifically, she related that during her visit to SVRCS on July 1, 2004, that:

“I did not know that when I asked [the administrators] for the special education plan, they said—and this was one of the opportunities where they [the administrators] went to check and see if they needed to have a special education plan. So I did not see a special education plan because there was no special education plan. If by that you mean compliance, then I did not see one.” (B.H.T., August 31, 2004, at P.36).

As set out above, the Department of Education found Sugar Valley in compliance with special education requirements. The findings of Keystone’s expert cannot take precedence over the findings of the Department of Education. This cannot, therefore, be a valid basis for a determination to not renew the charter.

7. Two students of SVRCS missed approximately two (2) months of school but were allowed to graduate because they satisfied the requirements in their respective IEPs. This begs the question of the sufficiency of the IEPs at SVRCS if two students were able to meet their goals under such circumstances. SVRCS refused to allow Dr. Trohoski to view any IEPs when she visited the school on July 1, 2004. SVRCS cited HIPAA as a reason for refusing her to view IEPs.

Dr. Trohoski did not know if HIPAA required Sugar Valley to receive a release from the student prior to making IEPs available. When releases were obtained, the IEPs were offered to

Dr. Trohoski, who declined to review them. Keystone may feel that students should not be able to meet graduation requirements if they miss two months of school. It cannot, however, in the absence of any evidence to show that the IEPs were not followed, and to show that the students did not meet graduation requirements, use this as a valid basis for denial of renewal of the charter.

8. Only 10% of IEP's were eventually made available to Dr. Trohoski. (B.H.T., August 29, 2004, at P. 120). Keystone finds that this lack of cooperation on the part of SVRCS is indicative of a special education program that lacks compliance with IDEA.

Even if Sugar Valley was truly uncooperative, and a reading of the entire record shows an unwillingness on the part of both Sugar Valley and Keystone to act reasonably, such lack of cooperation could not be proof that the special education program was not in compliance with IDEA.² This conclusion is particularly untenable based on the findings of the Department of Education that Sugar Valley was in compliance with special education requirements. This finding cannot, therefore, constitute a valid basis for denial of the renewal of the charter.

E. Fraudulent Conduct (§17-1729-A(a)(6))

1. Keystone finds that allegations have been raised that SVRCS has engaged in fraudulent conduct, and is currently under investigation. Until these allegations are refuted, a potential violation of §17-1729-A(a)(6) exists.

This finding is particularly troublesome. It seems to support the contention of Sugar Valley that Keystone was not acting in good faith. The Charter School Law clearly requires that a basis for non-renewal is “[T]he charter school has been convicted of fraud.” 24 P.S. §17-1728-A(a)(6). Allegations of fraudulent conduct do not rise to the level of a conviction. The standard in our nation is that a defendant is innocent until proven guilty. It is not incumbent upon Sugar

² Moreover, CAB notes that the applicable federal and state law governing student records prohibits the disclosure of IEPs absent parent consent. 20 U.S.C §1232g and 22 Pa. Code Chapter 12 and §14.102(a)(1)(xxv).

Valley to refute allegations, especially when there is no evidence that any entity other than Keystone and the person who raised the allegations, is pursuing this matter. As discussed infra, at page 17, the Department of Education has addressed and resolved any issues surrounding the school renovation grant in question. Since this matter has been resolved to the Department's satisfaction and no criminal charges have been filed, the district's assertion of alleged fraud is rejected out of hand. The revocation provision of the Charter School Law, in conformity with the basic tenets of our criminal law, requires conviction, not mere suspicion.

There was very little comment in the record when Keystone voted on the renewal. One member stated that it should only be renewed if the charter school was innovative or if there was dissatisfaction with the public school. Since he did not believe that either was true, he could see no reason to renew the charter. Neither of these reasons is a basis under the law for non-renewal. Another member commented that non-renewal should be based on the failure to amend the charter. There is not, however, a requirement in the law that states when a charter must be amended. Unless changes are material and acting upon them would violate the existing charter, they are not a basis for non-renewal. Based upon our careful review of the record there were no material violations of the charter.

IV. Summary

In sum, the CAB finds that Keystone had insufficient grounds to deny Sugar Valley's application for renewal of its charter. First, no material violation of the charter has occurred. Second, although student performance is slipping, there is not presently a failure to meet the requirements set forth in 22 Pa. Code Ch. 4 relating to curriculum or performance standards. Third, Sugar Valley has met generally accepted standards of fiscal management. Fourth, Sugar Valley has not violated the provisions of the Charter School Law. Fifth, Sugar Valley has not

violated any provision of law from which it has not been exempted. Sixth, Sugar Valley has not been convicted of fraud. As a result, there is no valid basis to deny renewal of the charter.

